FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL WRIT PETITION NO.627 OF 2006

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr.Shirish Gupte Senior Advocate with Rajiv Patil i/by M/s.Khaitan & Jayakar for the petitioner.

Mr.S.R.Borulkar, PP with Mr.S.S. Pednekar APP for the State.

Coram : R.S.Mohite,J

Date : 17.3.2006.

PC

1. Not on board. Mentioned out of turn.

2. This petition impugns an order passed by the Metropolitan Magistrate, 29th Court, Dadar, granting application filed on behalf of Senior Police Inspector, Worli police station, allowing accused to be taken for a poligraph test and a brain mapping test. The petitioner before the Court is accused of committing offences punishable under Sections

376 and 325 of IPC. The incident in question is said to have occured in the early hours of the morning of 12.3.2006. The FIR has been lodged on 12.3.2006. The legal aspect as to whether the police have the powers to conduct such tests on an accused or witness in a case, has been settled by two division bench judgments of this Court. The first judgment is the judgment of this Court in the case of **Ramchandra R vs. State of Maharashtra reported in 2004(1) Bom.C.R.(Cri.) 657.** This judgment is followed by another division bench judgment of this Court to which I was a party in the case of **Arun Gulab Gavali vs. State of Maharashtra reported in 2006(1) Bom.C.R.(Cri.) 231.** In the case of Ramchandra (supra) this Court had taken a view that the police had the powers to conduct a poligraph test, brain mapping test and narco analysis test. In so far as first judgment is concerned, the matter has been

carried to the Apex Court, but no stay has been granted by the Apex Court. APP makes a statement that no narco analysis test will be conducted on the present petitioner. It was sought to be contended before me that the case of Ramchandra (supra) pertains to the serious crime punishable under MCOC Act. In my view, offence of rape cannot be said to be not serious. On the contrary, the said is punishable with imprisonment of life. In any case, the Court cannot make a distinction between different crimes vis-a-vis the investigation. It was sought to be argued that no investigation remain to be carried out. That is not a matter to the Court to decide. Investigating officer is the best judge to decide it and all tools of investigation are available to him. It may be stated here that the impugned order is not yet annexed to the petition on the footing that the same is not available. I have

however, proceeded on the admitted footing that the said order allows the investigating officer to conduct both these tests. In the circumstances, there is no substance in the petition. Hence, petition is dismissed.

(R.S.Mohite,J)